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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,340	06/19/2001	Michael R. Smith	04919.00018	9648
22907	7590	09/28/2005	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			RUHL, DENNIS WILLIAM	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,340

Applicant(s)

SMITH ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 15-28 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two prong test of:

1. Whether the invention is within the technological arts; and
2. Whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere idea in the abstract (i.e. abstract ideas, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. physical sciences as opposed to social sciences for example), and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, use or advance the technological arts.

For claims 15-28, the claims do not require or recite any use of technology and are not considered to be within the technological arts. All of the recited steps can be performed mentally by a person (with no technology at all). The enterprise system can be simply a business and does not require any technology in the sense that the enterprise system must be a computer system. The breadth of the term "enterprise system" is broader than a computer system and can be the structure of a business itself (employees).

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-16,19-22,25-30,33-36,39-43,46-49, are rejected under 35 U.S.C. 102(e) as being anticipated by Kelly et al. (20050154531).

For claims 1,13,14, Kelly discloses a processor 12 and a memory that is fully capable of storing instructions as claimed. The language “for use with an enterprise system” and “for storing computer readable instructions” is setting forth the intended use of the weather module and the memory. All that claim 1 is reciting is a processor and a memory, which is really anticipated by any computer, but is anticipated by Kelly. Reciting that the memory is for storing instructions is not the same as reciting that they are actually stored in the memory. Reciting that the memory is for storing the instructions is just reciting a memory with the intended use being for the recited instructions. In view of the claim language any recitations directed to the instructions are just further recitations directed to the intended use of the memory.

For claim 3, the claim is reciting another database. The method steps has been considered but treated as such and defines no structure. The database of claim 3 is satisfied by any of the other databases of Kelly. The scope of claim 3 is a processor, a

memory for storing instructions (but not actually storing them), and a database. This is all that is claimed in the scope of claim 3.

For claims 2,5,11,12, recitations directed to the kind of data used by the system are non-functional descriptive material that does not serve as a limitation. In apparatus claims, reciting that the data is wind or rain data or reciting what the threshold information is made up of is not reciting any kind of structure for the recited weather module. Claim 1 is an apparatus (an article) claim and in article claims structure is what is given patentable weight.

For claims 3,9,10,11,12, the intended use of the system has been considered but does not result in a structural difference from what Kelly discloses. If the prior art is capable of the claimed intended use, which Kelly is fully capable of, then it is properly applied.

For claims 4,6-8, applicant is reciting method of use limitations in article claims. Because the system of Kelly is capable of operating as claimed and because the claims are not defining any further structure, Kelly anticipates what is claimed. Dependent claims that are only reciting method steps directed to using the system define no further structure to the article itself.

For claims 15,16,22,29,30,36,43, Kelly discloses a system (includes storage medium and instructions) and method of providing weather information to individual users or individual business'. Paragraph 30 and 33 disclose the receiving of weather information from a weather provider such as the National Weather Service (NWS). Kelly discloses that the weather forecast system can be an ADONIS™ system. This

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kind of system collects weather information from a weather provider such as the NWS and calculates and provides detailed forecasts concerning weather that is of interest to entities such as any particular business. Paragraph 37 discloses that the user can define ranges for various weather variables (temperature, sky conditions, precipitation, wind, etc.) that are of interest to the business and that they want to be informed about. These variables and ranges satisfy the claimed critical threshold information that relates to a business decision. The specified variables and their respective ranges are used to generate reports/messages to the user. The system and method of Kelly determines if the user defined thresholds will be exceeded in the future (i.e. is it going to rain?). The system then sends out a message to the user informing them of the weather conditions. This message satisfies the limitation of sending event information to an enterprise system (computer 16 of the user) so that the business can alter a business decision. The received information is used to alter a business decision (i.e. when planning to pour concrete, if you are notified that there is a 100% chance of rain the next day, you can alter your business decision by not pouring the concrete the next day). For claim 43, the processor is 12 and the stored critical threshold database is 26. The recited "business decision module" is a broad term and is satisfied by computer 16 of the user.

For claims 19-21,33-35,46,47, when a user specifies that they want to know information about a certain weather variable, they are inherently specifying a probability in addition to a critical level (upper range limit). One can specify that they want to be informed if the forecast is for any amount of rain. This is a critical level of any amount and a probability of 100%. Kelly discloses threshold information as claimed.

For claims 25,26,39,40, Kelly discloses that the critical threshold variables can be temperature, sky conditions, as well as wind speed and direction of wind. This satisfies what is claimed.

For claims 27,41,48, when a message is sent to the user alerting them to the fact that a user defined threshold is going to be exceeded, the forecast will inherently include a period of time that the threshold will be exceeded (i.e. it is going to rain tomorrow but the next day is all clear). The claimed delay information is the weather forecast information that is sent to the user informing them of the forecast.

For claims 28,42,49, Kelly discloses that weather data in the form of a forecast model is saved in a database 28. When the data is needed to be compared against a user profile of weather variables and send a user a message, the database is queried for data, so that the data can be analyzed with respect to the user defined variables. In claim 28 the claimed query requestor is taken as the portion of the system that requests the data from database 28.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 17,18,23,24,31,32,37,38,44,45, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. (20050154531).

For claims 17,18,31,32,44,45, Kelly does not disclose the use of both meteorological and climatological data in the forecast. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use both metrological and climatological data in the forecast. This claim is reciting the use of current weather data and past weather data in formulating the forecast. To make a forecast you must take into account recent weather data (is pressure dropping based on some past measurements?) with current data (what is the current pressure), to determine what the pressure will be in the near future. Weather forecasting as is well known in the art is not limited to just using meteorological data but also takes into account past historical data (which includes weather data for the most recent hour). Any weather data that is in the past, even 1 minute old, is historical data (climatological). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use both meteorological and climatological data in the forecast.

For claims 23,24,37,38, Kelly discloses that any business that is affected by weather can use the system and method of Kelly in the operation of their business. Kelly discloses examples such as in the construction industry, pouring concrete and erecting a crane at a site. It is well known that aircraft operations and utility operations are affected by weather. Weather most obviously is of interest to anyone flying or operating a flying operation and with respect to a utility company, ice storms are well known for the damage they cause by downing power lines. It would have been obvious to one of ordinary skill in the art to have an aircraft flight operation company and an electric utility company use the service of Kelly so that they can be informed of upcoming weather that can affect their business operations.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Katz et al. (20020178077), Fox et al. (5521813; 5796932; 5832456; 20020133385; 6584447), Kelly et al. (6654689; 6498987), Lee et al. (5712985), Smith et al. (6405134), Cannon et al. (6104582), Tu (6014606), Sznajder et al. (6753784; 20030107490), Peterson et al. (20020084900), Yoshida et al. (20020091692), Root et al. (6505123) disclose systems that involve weather forecasting. These patents disclose the importance of weather in business decisions. Applicant is strongly encouraged to review the cited references when formulating a response to this office action.

"SpaceRef.com" discloses the weather criteria that must be satisfied for the Space Shuttle to launch. NASA has set threshold limits (or ranges for the variables) for certain weather variables and the determination that a threshold has been exceeded will result in the altering of a business decision as far as whether or not the Shuttle can safely launch. NASA processes this information by computers (not by hand calculations) and it is an automated process.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DENNIS RUHL
PRIMARY EXAMINER